FILE COPY.

FILED
NOV 12 190
JAMES H. McKEN

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
APPELLANT,

vs.

THE CITY OF CLEVELAND ET AL.,
APPELLEES.

SUPPLEMENT TO RECORD.

STIPULATION MAKING CERTAIN ORDINANCES PART OF THE RECORD AND ORDINANCES.

THE BROOKS COMPANY, CLEVELAND, OHIO, 9060

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 197.

The Cleveland Electric Railway Company,
Appellant,
vs.
The City of Cleveland and The Forest City Railway Company,
Appellees.

STIPULATION

This cause was tried under an arrangement between counsel, sanctioned by the Court, that either party might incorporate into the record such ordinances as were referred to either in the pleadings or by counsel, or were deemed material to the controversy. When the record was made up and printed certain ordinances were omitted.

It is therefore stipulated that the copies of ordinances printed by The Cleveland Electric Railway Company, being the ordinances making the grants in force as respects The Broadway & Newburgh Street Railroad Company, The South Side Street Railroad Company, and The Brooklyn Street Railroad Company, at the time of the consolidation forming the complainant on the 29th of May, 1893, referred to in the Record in this cause at page 230.

2. And also an ordinance granting to The Cleveland Electric Railway Company the right of extension from Carabelli Street to the easterly limits of the city, passed October 21st, 1895, and

3. Ordinance granting to The Cleveland Electric Railway Company the right to extend across Deering, Stearns and Fairfield Streets, with suitable connections at Euclid Avenue and Cedar Avenue, passed September 21, 1896, and

4. Ordinance granting The Broadway & Newburgh Street Railroad Company the right to extend along Miles Avenue to the easterly limits of the City, passed October 21, 1889, and

5. Ordinance granting The Broadway & Newburgh Street Railroad Company the right to extend in Broadway and Liberal Street to connect in Humboldt Street, passed July 21, 1890.

Which ordinances and each of them were duly accepted by the respective companies, and shall constitute a part of the record as fully as if contained in the transcript as certified by the Clerk of the Circuit Court.

It is further stipulated that the ordinances printed by the City of Cleveland, as additional to the record, shall likewise constitute a part of the record as fully as if contained in the transcript as certified by the Clerk of the Circuit Court, said ordinances being—

1. An ordinance to grant the St. Clair Street Railroad Company an extension of its charter for a term of twenty-five (25) years. Passed January 5th, 1885.

2. An ordinance to grant to the Superior Street Railroad Company an extension of its charter for a term of twenty-five (25) years. Passed January 26th, 1885.

3. An ordinance to fix the terms and conditions for the consolidation of the West Side Street Railroad Company and the Woodland Avenue Railway Company. Passed February 16th, 1885.

4. The electricity ordinance for the Woodland Avenue and West Side Street Railroad Company. Passed March 22nd, 1889.

5. The Cleveland City Cable Company's extension ordinance in Hough Avenue. Passed June 22nd, 1891.

6. The resolution of Mr. O'Brien, adopted March 27th, 1893.

7. The certificate of Peter Witt, City Clerk, as to the legislation pending at the time of the adoption of the O'Brien resolution.

8. The Cleveland City Railway Company's extension ordinance in Erie Street. Passed July 3rd, 1893.

9. The Cleveland City Railway Company's extension ordinance in Ansel Avenue. Passed March 12th, 1894.

10. The Cleveland Electric Railway Company's extension ordinance in Broadway. Passed August 19th, 1895.

11. The Cleveland Electric Railway Company's extension ordinance in Burton Street and Rhodes Avenue. Passed April 12th, 1897.

12. The Cleveland Electric Railway Company's extension ordinance in Euclid Avenue. Passed May 14th, 1900.

13. The Cleveland City Railway Company's extension ordinance in Ansel Avenue. Passed November 12th, 1900.

14. The Cleveland Electric Railway Company's extension ordinance in Fremont Street. Passed March 25th, 1901.

15. The Cleveland City Railway Company's extension ordinance in Woodland Hills Avenue. Passed April 2nd, 1901.

16. The Cleveland City Railway Company's extension ordinance in Lake Avenue. Passed April 2nd, 1901.

17. The Cleveland Electric Railway Company's extension ordinance in Bank Street. Passed June 24th, 1901.

18. The Cleveland Electric Railway Company's extension ordinance in Michigan Street. Passed July 1st, 1901.

19. The Cleveland Electric Railway Company's extension ordinance in the Public Square. Passed August 5th, 1901.

20. The Cleveland Electric Railway Company's extension ordinance in Bolivar Street. Passed January 13th, 1902.

21. The Cleveland Electric Railway Company's extension ordinance in Erie Street. Passed June 23rd, 1902.

22. The record in the case of the State of Ohio versus The East Cleveland Railroad Company.

The stipulations hereby made, admitting the above named ordinances and papers to be a part of the record, admits the correctness of the papers and their passage at the time stated, and their acceptance, but does not admit the relevancy or the materiality of the ordinances, resolutions or records, the stipulation being without prejudice to the right of either party to object to such papers on the ground of irrelevancy or immateriality.

It is also stipulated that the ordinance of February 9th, 1885, record page 211, as printed, omits the following language beginning in the ninth line thereof after the words "main line", the language so omitted being as follows: "and terminating with the grant for the main line." And that the record may be corrected accordingly by interlineation.

WM. B. SANDERS.
Of Counsel for Appellant.
NEWTON D. BAKER, and
D. C. WESTENHAVER,
Counsel for Appellees.

ORDINANCE No. 846.

AN ORDINANCE granting the Broadway & Newburgh Street Railroad Company the right to use electricity in operating its street railroad.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the Broadway & Newburgh Street Railroad Company is granted permission to operate its entire line of street railroad, as the same now exists, with any and all extensions that may hereafter be granted thereto, by electricity as a motive power, using such electric plant in the public streets as shall be acceptable to the Board of Improvements, and for such purposes said company shall have the right to erect and maintain poles, wires, fixtures or conduits, and all

other appliances or appurtenances that, in the opinion of said Board of Improvements, shall be found necessary to successfully operate its street railroad by electricity, and said entire line shall be operated with electricity within twelve months after the passage of this ordinance.

SECTION 2. In the erection of poles and placing of wires or conduits, and in the use of any and all other appliances or appurtenances that may be found necessary to operate its line by electricity, and before the improvement shall be made upon any or all of its lines for the purpose of using electricity, a plan of the same, showing all poles, wires, and other appliances or appurtenances that said company shall desire to use, shall be submitted to and approved by the board of improvements, said board having the right to fix the distance at which poles shall be apart, the height of all poles and wires, and the size and location of all conduits, and to regulate the places within the streets where any and all appliances or appurtenances shall be located, and to establish such regulations with reference to the public safety, protection, painting and sightliness of the poles and appurtenances, as said board of improvements shall determine.

SECTION 3. The running of cars on any part of the lines of such company may be suspended by the board of improvements for such reasonable time as may at any time be necessary on account of paving, repaving, construction or repairs of streets or sewers, or other public improvements, and whenever it may be necessary to have any track taken up for the purposes aforesaid, the same shall be taken up and relaid at the expense of said railroad company whenever required by said Board.

SECTION 4. Said railroad company shall at all times hereafter, defend, keep harmless, and indemnify the city of Cleveland from any and all damages, lawful claims, and demands for injuries to persons or property, costs and expenses to which said city may be subjected, or made liable by any proceeding at law or in equity, or otherwise growing out of the

grant of the privileges in this ordinance granted, or out of the exercise of the same by said company.

SECTION 5. Said company shall, at all times, conform to such rules and regulations as may from time to time be made by the Council and approved by the Board of Improvements as to the rate of speed it may run its cars, and while the cars of said company are in motion or about to start, warning shall be given by bell or otherwise to notify persons of any immediate or approaching danger.

SECTION 6. That the city reserves to itself the right to grant to any other person or persons, company or corporation, a joint use for street railroad purposes of the tracks, poles, wires, electric currents, and other appliances herein provided for upon that portion of Ontario street lying north of the southerly line of Factory street, through or around Monumental Park and in Superior street west of Ontario street as is free territory under existing grants, upon such terms and conditions as to occupation and compensation as the City Council may deem just and reasonable, in case such companies should fail to come to such agreement by and between themselves.

SECTION 7. *The grant herein made shall terminate twenty-five* (25) *years from and after the passage of this ordinance*, and said company shall have the right to maintain and operate its present line and any and all extensions in the manner herein prescribed until the expiration of said period.

SECTION 8. Nothing contained in this ordinance shall in any wise release or relieve said company from compliance with all other ordinances relating to street railroads now in force or which may hereafter be adopted by the City Council, including all amendments hereto and thereto.

SECTION 9. Said railroad company shall, in writing, within thirty days after the passage of this ordinance, accept the permission and privilege hereby granted and agree to comply therewith.

SECTION 10. This ordinance shall take effect and be in force from and after its passage and legal publication and the

payment to the City Auditor by said company of the expense of publication.

Passed July 1, 1889.

F. O. SPENCER,
President of the Council.

H. H. BURGESS,
City Clerk.

No. 1026.

AN ORDINANCE granting permission to the Broadway & Newburgh Street Railroad Company to extend its line of double track street railroad on and along Miles avenue, from Broadway to the easterly limits of the city.

SECTION 1. Be it ordained by the city Council of the city of Cleveland, That the Broadway & Newburg Street Railroad Company be and it is hereby granted permission to extend its double track street railroad and construct, maintain and operate the same on and along Miles avenue, from Broadway to the easterly limits of the city.

SECTION 2. Said Broadway & Newburgh Street Railroad Company shall pave between the outer rails of its said tracks including the "devil strip" at the same time that said tracks are laid under the direction and to the acceptance of the Board of Improvements and with such material as said Board may direct.

SECTION 3. Said company shall begin laying the track herein authorized, within six (6) months from the date of passage of this ordinance, and shall have the same completed within twelve (12) months thereafter.

SECTION 4. No additional fare shall be charged any passenger between any points on the main line of said company and this extension.

SECTION 5. *This grant shall expire with the grant of said company for its main line and extensions as made July* 1, 1889, *to wit: July* 1, 1914, and be subject to all the terms, conditions, limitations and obligations imposed on said company

by the general street railroad ordinance of the city and the said ordinance of July 1, 1889, and all amendments thereto and hereto.

SECTION 6. Said company shall file with the City Clerk within thirty (30) days after the passage of this ordinance, a written acceptance of the same, and such acceptance shall be deemed an agreement to perform all and singular the conditions and requirements of this ordinance, otherwise this ordinance shall be null and void.

SECTION 7. This ordinance shall be in force from and after its passage and legal publication and payment to the City Auditor of the cost of such publication.

Passed October 21, 1889.

F. O. SPENCER,
President of the Council.

H. H. BURGESS,
City Clerk.

AN ORDINANCE to grant the Broadway & Newburg Street Railroad Company the right to extend and operate its line of double track street railroad now in Broadway at Liberal street, thence in and along Pittsburg street and Kingsbury Run Viaduct Extension (so-called) to, and connect with, said company's tracks now in Humboldt street.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the Broadway & Newburg Street Railroad Company be and is hereby granted permission to extend its double track street railroad and construct, maintain and operate the same from its present tracks in Broadway at Liberal street, in and along Pittsburg street and Kingsbury Run Viaduct Extension (so-called) to and connect with said company's tracks in Humboldt street.

SECTION 2. Said company shall relay at its own cost, the stone pavement now in said Pittsburg street in the space fourteen (14) feet wide to be occupied by said company's

tracks and such additional pavement outside of its tracks as in the opinion of the City Civil Engineer may be deemed necessary, the work to be done under the direction and to the satisfaction of the Board of Improvements. Said company shall also take up and reset the present curb back three feet on each side from its present location and shall grade and pave said three foot spaces with the best quality of common Medina stone, laid dry, and shall pay all expenses incident to and occasioned by said widening as required by the Board of Improvements. Said comany shall within thirty (30) days refund to the abutting property owners in said Pittsburg street, the original first cost, as determined by the City Civil Engineer, of the grading and paving of the space fourteen feet wide to be occupied by said company's tracks.

SECTION 3. Said company shall pave its tracks and the space between its tracks in Kingsbury Run Viaduct Extension (so-called) with the best quality of common Medina stone, laid dry, except such part of said Kingsbury Run Viaduct Extension (so-called) as now remains a wooden trestle. When said trestle shall be removed and said part of said Kingsbury Run Viaduct Extension (so-called) as is now said trestle shall be filled and brought to the established grade, then said company shall pave its tracks and the space between its tracks in said part of said Kingsbury Run Viaduct Extension (so-called) with the best quality of common Medina stone, laid dry, or such other pavement as the Board of Improvements may direct. And said company shall pay to the city annually such portion of the cost of maintaining said trestle as shall be deemed just and equitable by the Board of Improvements, and said company shall repair said Kingsbury Run Bridge Extension (so-called) in such manner as to fit the same for use by said railroad by rebracing and strengthening the trestle work thereof, and shall hold the city of Cleveland free and harmless from all damages resulting from such repairs, rebracing or occupation or use of said bridge for said purpose by said company. The city reserves the right to grant to other street railway com-

panies the right to use and operate jointly the tracks and electrical plant on said Kingsbury Run Bridge or Extension upon just and equitable terms.

SECTION 4. Said company shall begin laying the track herein authorized within six months from the date of passage of this ordinance and shall have the same completed within twelve months thereafter.

SECTION 5. No additional fare shall be charged any passenger between any points on the main line of said company and this extension, and cars shall be run over said extension at intervals not exceeding fifteen minutes each way from the time of first running cars thereon and all cars shall run around the "St. Clair loop" so-called.

SECTION 6. *This grant shall expire with the grant of said company for its main line and extensions, as made July 1st, 1889, to wit: July* 1, 1914, and be subject to all the terms, conditions, limitations and obligations imposed on said company by the general street railroad ordinances of the city, and the said ordinance of July 1, 1889, and all amendments thereto and hereto.

SECTION 7. Said company shall file with the City Clerk within thirty (30) days after the passage of this ordinance a written acceptance of the same, and such an acceptance shall be deemed an agreement to perform all and singular the conditions and requirements of this ordinance, otherwise this ordinance shall be null and void.

SECTION 8. This ordinance shall be in force from and after its passage and legal publication and payment to the City Comptroller of the costs of such publication.

Passed July 21, 1890.

F. O. SPENCER,
President of the Council.

H. H. BURGESS,
City Clerk.

ORDINANCE No. 246.

AN ORDINANCE to grant to the Brooklyn Street Railroad Company an extension of its charter for a term of twenty-five years.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the Brooklyn Street Railroad Company, its successors and assigns, be and the same are hereby authorized to maintain and operate its double track street railway with the necessary switches, turn-tables and turn-outs, commencing in Pearl street at the city limits, thence along and through Pearl street to the viaduct; thence along and over the viaduct to Superior street; thence along and through Superior street to Monumental Park; thence around the southwest corner of Monumental Park to Ontario street; thence along and through Ontario street to Ohio street; thence along and through Ohio street to Erie street; thence along and through Erie to Parkman street; thence along and through Parkman street to Brownell street; thence along and through Brownell street to Scovill avenue; thence along and through Scovill avenue to Cemetery street; also from the Cleveland, Columbus, Cincinnati & Indianapolis Railroad track on Clark avenue, along and through Clark avenue to Pearl street; and from Scovill avenue on Willson avenue along and through Willson avenue to Broadway, subject to the following conditions and limitations, to wit: Provided, that if at any time the Council shall require said company to run through Monumental Park to Ontario street and thence along Ontario street instead of around the west and south sides of said park, then said company shall comply with such regulation, and if in the judgment of the city it be necessary for the accommodation of the public in so changing the route around the park to construct an additional track, switches or turn-outs at any point on the line herein named, then said company shall construct said track, switches and turn-outs. And the city reserves the right to compel joint use, with any other companies, of any track constructed by said company between any point north of the junc-

tion of Broadway and Ontario street and the corner of Lorain and Pearl streets. Provided, that nothing herein contained shall in any way interfere with the terms of any lease now in force between other companies and the Brooklyn Street Railroad Company. And that the said Brooklyn Street Railroad Company shall pay to the city for the use of tracks on the viaduct the sum of three hundred dollars ($300) per annum, the same to be paid quarterly, when due, from the passage of this ordinance.

SECTION 2. All tracks hereafter laid by said company to be standard gauge and the rail of the same pattern now laid and used on said railway, or that may hereafter be found necessary and consented to by the City Council, with suitable gutters at all necessary points so as to permit the free flow of water under the same and on such grades as are now or may hereafter be established by the City Council and subject at all times to be taken up and relaid whenever deemed necessary by the City Council.

SECTION 3. Whenever the city shall deem it necessary to grade, regrade, pave or repave any streets wherein said tracks are laid, the company shall be required to pave or pay to the city the cost of same, at such time and in such manner as the Board of Improvements may direct (at the city's option), any part or all the track between the rails used by them with such pavement as the Council and Board of Improvements may deem proper, unless in the judgment of the Council and Board of Improvements, pavement laid prior to such grading or regrading, paving or repaving, shall be in sufficient good condition and grade. And said company is also required to keep such pavement in constant good order, said paving and repaving to be done under the direction of and to the acceptance of the Board of Improvements.

SECTION 4. Said company shall place and continue on said railway good cars, with all modern improvements, for the convenience and comfort of passengers and shall run cars thereon as public convenience may, in the judgment of the City

Council require under such directions as the City Council may from time to time prescribe.

SECTION 5. Said company shall not charge more than five cents each way for one passenger on the whole or any part herein renewed, but said company may charge a reasonable compensation for carrying packages. And for the convenience of its patrons the company shall at all times keep tickets for sale on the cars by the conductors at the rate of twenty-two (22) for one dollar ($1) or eleven (11) tickets for fifty cents (50c).

SECTION 6. It is understood and agreed that the City of Cleveland shall not be held liable to said company for any damage resulting from the breakage of any sewer or water pipe or for any delay that may be caused by the construction of sewers, the laying of water or gas pipes or the necessary repairing of the same, or for any delay or damage that may be caused by fire or otherwise; all rights vested in the City Council, the Trustees of Water Works or Gas Company, in respect to the care and improvements of streets, the construction of sewers, culverts or drains, and the laying of water and gas pipes therein, are in no way to be impaired or affected by the privileges hereby granted to said company, but the rights and privileges granted to said company, by virtue of this ordinance shall be subject thereto, and said company shall be liable for any loss or injury that any person may sustain by reason of any carelessness, neglect or misconduct of their agents or servants in the management, construction or use of said railway. And said company shall indemnify and hold the city harmless from any damage that may be claimed by property holders or by any person or persons on account of the laying of the track, or in the use, or by reason thereof, or by running the cars thereon.

SECTION 7. Said company shall be required to pay to the City of Clevelaid an annual license of ten dollars for each car used on this railway.

SECTION 8. The authority and privileges in this ordinance named and provided for are to be and remain in force for the full period of twenty-five years from the date of the passage of this ordinance, the said company, its successors and assigns performing the several conditions by this ordinance required.

SECTION 9. That in case of failure by neglect or otherwise on the part of said Brooklyn Street Railroad Company, its successors or assigns, to perform all and singular the conditions of this ordinance or amendments hereto, together with all and singular the general ordinances of the city now or hereafter in force or amendments hereto, the privilege hereby granted and renewed shall become void and of no effect and shall cease upon the adoption of an ordinance of the Council to that effect.

SECTION 10. This ordinance shall take effect and be in force from and after its passage and legal publication and filing by said company with the City Clerk of a written acceptance of the terms and conditions thereof and paying to the city the cost of printing the same.

Passed January 26, 1885.

Expires January 26, 1910.

AN ORDINANCE granting the South Side Street Railroad Company the right to construct, maintain and operate an electric street railway from center of Holmden avenue, on Jennings avenue, through Jennings avenue to Central Viaduct and over viaduct to Central market house and other streets in the city of Cleveland herein specified.

SECTION 1. Be it ordained by the city council of the city of Cleveland, that,

WHEREAS, the South Side Street Railroad Company, operating a street railway under and by virtue of certain ordinances of the city upon Jennings avenue, Professor and Fairfield streets, Scranton avenue and Seneca street, in said city, has by a communication to the common council, of date August 20,

1888, signified its willingness and desire to change the motive power upon said Jennings avenue line and branch lines and operate its cars thereover and over certain extensions therefrom; and

WHEREAS, there is a desire on the part of the people residing on the South Side for a more convenient and rapid mode of transit and that an electric system be substituted for animal power for the movement of cars; therefore the South Side Street Railroad Company is hereby granted permission to erect and maintain poles of such material and design as shall be approved by the board of improvements and the city civil engineer and place wires and the necessary appliances and fixtures thereon for conducting currents of electricity, for the purpose of transmitting and producing motive power and propel and operate its cars upon the following named streets in said city, to wit: Jennings avenue, from the center of Holmden avenue to Central viaduct; thence by the city tracks on Central viaduct to a connection with the Brooklyn Street Railroad Company's tracks at the corner of Ohio and Central place, building at said company's sole expense the tracks necessary to make the connection between the tracks of the Brooklyn Street Railroad Company and the city's tracks, which shall be free territory as hereinafter specified; thence in Central place by the tracks of the said last named company to the connection of said tracks with the tracks of the Woodland Avenue and West Side and the Broadway and Newburg Street Railroad companies, opposite the Central market house, and an extension along Fairfield and Professor streets. The erection of such poles, and a line of poles from Pearl street to Jennings avenue, and the placing of wires thereon, shall be under the supervision and subject to the control of the board of improvements and city civil engineer. Such poles shall not be less than twenty-five feet in height above the ground, and shall not be over eight inches in diameter at the base, unless otherwise approved by the board of improvements, shall be painted and repainted by such company from time to time, and in such

color as the board of improvements or the city civil engineer may direct. They shall be set one hundred and twenty-five (125) feet apart on each side of the street, except when otherwise expressly permitted in writing by the city civil engineer; such poles shall be placed at such points near the curbstone of streets and side lines of Central viaduct as shall be designated by the city civil engineer. Should it become necessary in the prosecution of any work authorized by the city, that such poles or wires should be temporarily removed or placed in new location, such removal shall be made by said company when directed by the board of improvements, and such poles shall be taken up and reset at the cost of said company without any claim of damage therefor on the part of said company. Said company shall use such precautions for safety, from time to time, as the board of improvements may direct or require.

SECTION 2. The running of cars on any part of the lines of the South Side Street Railroad Company may be suspended by the board of improvements and without cost to the city for such reasonable time as may at any time be necessary on account of the repairs of streets, bridges, sewers or other public improvements; and whenever it may be necessary to have any tracks taken up, poles and wires removed for the purpose aforesaid the same shall be taken up and replaced at the expense of said railroad company.

SECTION 3. Said railroad company shall at all times hereafter defend, keep harmless and indemnify the city of Cleveland of and from all damages, lawful claims and demands for injuries to persons or property, cost and expense to which the city may be subjected or made liable by any proceedings at law or in equity or otherwise, growing out of the grant of privileges in this ordinance granted, or out of the exercise or enjoyment of the same by said company.

SECTION 4. Said company shall at all times conform to such rules and regulations as may from time to time be made by the council and approved by the board of improvements as

to the rate of speed at which it may run its cars on the streets heretofore designated; and while the cars of said company are in motion or about to start a bell shall be sounded at such times as may be necessary to warn persons of danger and shall further provide each car with a headlight during hours of darkness.

SECTION 5. The said permission herein given is upon the condition that this grant shall be exercised as far south as Holmden avenue on Jennings avenue within three months of suitable weather for outside work, after notice from the city civil engineer of the completion of the Central viaduct; and it is also granted with all privileges and subject to all the conditions of this ordinance and of the several ordinances by which the South Side Street Railroad Company is permitted to lay rails and operate cars thereon in the streets of the city of Cleveland, so far as not inconsistent herewith and to the general ordinance governing street railroads in the city of Cleveland and all the ordinances in amendment thereof and in addition thereto.

SECTION 6. The privilege of constructing the electric system and the operation of its lines, as hereinbefore provided, is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon the lines herein specified; but nothing herein shall be construed so as to authorize any increase of present fares of 5 cents for transportation over any portion of said company's lines. Said company shall at all times keep on sale with its conductors on its cars, tickets at the rate of twenty-two for $1 or eleven for 50 cents and shall give to each passenger the privilege of transferring to any of the lines of the South Side Street Railroad Company, or the Brooklyn Street Railroad Company, whenever such lines intersect or coincide, so as to permit said passenger, for one fare of 5 cents, to have a continuous ride

over this line and the intersecting lines of this company or the Brooklyn Street Railroad Company.

SECTION 7. The consent and agreement of the Brooklyn Street Railroad Company, having been filed with the common council, to the use of its tracks in Central place as herein contemplated by the South Side Street Railroad Company, said agreement is hereby approved and confirmed. The said South Side Street Railroad Company's tracks between the south end of Central viaduct and the south line of Willey street and the connection between the city's tracks on or near Ohio street, and the tracks of the Brooklyn Street Railroad Company, shall be free territory, and subject to use together with trolley wires and poles, by other companies, on such terms of compensation for the use as the council shall fix, if the parties cannot agree thereon; and no other part of the tracks of said South Side Street Railroad Company shall be free territory. The South Side Street Railroad Company binds itself and its assigns that it or its assigns shall on Jennings avenue between Central viaduct and Holmden avenue at once pave the spaces between its rails, and the space between its tracks known as the "devil strip," with the best quality of firebrick pavement. Asphalt cement filling to be used between joints when same is used on balance of street, when the same is paved, and shall further pay to the city, at such times as the board of improvements may require or order, the cost of paving a strip three feet wide on each side of its tracks of whatever kind of material the balance of said Jennings avenue shall be paved with, when the common council shall order said avenue or any part thereof to be paved, and maintain its tracks, and pavement within its track, and the "devil strip" between its tracks in thorough repair to the satisfaction of the board of improvements.

SECTION 8. The South Side Street Railroad Company shall pay to the city of Cleveland for the use of the Central viaduct, between Jennings avenue and Hill street, and the city's tracks on the same, and the approaches, annually the sum of fifteen hundred dollars during the term of this grant, pay-

able quarterly in advance, excepting the first two (2) years the compensation shall be one thousand ($1,000) dollars per year, which amount is to be placed to the credit of the bridge fund, and also to keep in repair, to the satisfaction of the board of improvements, the city's tracks on the Central viaduct and approaches and the pavements within the said two tracks.

SECTION 9. Said company shall in writing accept the permission and privileges hereby granted and agree to comply with, adopt and abide by all the provisions, conditions and restrictions upon which the same are granted within thirty days after the passage of this ordinance, and shall within said time file the said writing with the city clerk; otherwise this ordinance shall be null and void; such acceptance shall be deemed an agreement of said railroad company with the city to perform all and singular all matters and things required of said company to be performed under this ordinance, and if said company shall fail to do and perform any of the requirements of this ordinance or the general ordinance governing street railroads when required by the board of improvements, the board of improvements for and in behalf of said city may cause the same to be done and charge the expense thereof to said company.

SECTION 10. Within two years, or sooner, if the board of improvements shall so require, said company shall use the same system as herein provided on the entire length of its line or lines, as herein specified, and on the Fairfield and Professor street branch, and extended down Ontario to Superior street, down Superior street to Bank street, Bank street to Lake street, Lake street to Water street, Water street to Superior, Superior street to Ontario, and Ontario street to the point of connection at the Central market house, upon necessary consent for use of tracks being obtained.

SECTION 11. This ordinance shall take effect and be in force from and after its passage and legal publication, and the

payment to the city auditor, by said company of the expense of such publication.

Passed October 5, 1888.

Expires October 5, 1913.

No. 866o.

AN ORDINANCE granting permission to the Cleveland Electric Railway Company, its successors and assigns, to extend its double track street railroad, from the junction of Carabelli street and Euclid avenue, easterly to the easterly limits of the city of Cleveland.

SECTION 1. Be it ordained by the City Council of the city of Cleveland, That the Cleveland Electric Railway Company, its successors and assigns, be, and they are hereby granted permission to extend their line of railroad, and to construct, maintain, and operate a double track street railroad, with the necessary poles, wires, and other electrical appliances, in and along Euclid avenue, from the present tracks of said company at the junction of Carabelli street with said Euclid avenue, easterly to the easterly limits of the city of Cleveland.

SECTION 2. Said the Cleveland Electric Railway Company, shall grade, improve, and pave with dressed block Medina stone, with concrete filling, a strip sixteen feet in width in Euclid avenue, from Carabelli street easterly to the present easterly limits of the city of Cleveland, and maintain the same in good condition and to the acceptance of the Board of Control, and no additional fare shall be charged by said company by reason of this extension.

SECTION 3. *This grant shall expire July* 1, 1914.

SECTION 4. The rights and privileges herein granted shall be subject to the provisions of the general street railroad ordinances, so far as the same may be applicable and not inconsistent herewith, and such further and future reg-

ulations as may be ordered by the Council; and subject also to the provisions of the special ordinances under which the East Cleveland Railroad Company was authorized to construct and operate its road to its present terminus at Carabelli street.

SECTION 5. Said company shall file with the City Clerk, within thirty days after the passage of this ordinance, a written acceptance of the same, and such acceptance shall be deemed an agreement to perform all and singular the conditions and requirements of this ordinance, otherwise, this ordinance shall be null and void.

SECTION 6. This ordinance shall be in force from and after its passage and legal publication, and the payment to the City Treasurer of the cost of such publication.

Passed October 21, 1895.

H. H. Burgess, City Clerk. Dan F. Reynolds, Jr. Pres. of the Council.

Approved by the Mayor October 31, 1895.

No. 12995A.

AN ORDINANCE granting permission to the Cleveland Electric Railway Company, its successors or assigns, to extend its street railroad across Deering, Stearns, and Fairchild streets, with suitable curves or connecting tracks in Euclid avenue and Cedar avenue.

SECTION 1. Be it ordained by the City Council of the city of Cleveland, That the Cleveland Electric Railway Company, its successors or assigns, be and it is hereby granted permission to extend its line of railway, and to construct, maintain and operate a double track street railway, with the necessary poles, wires, and other electrical appliances, across Deering, Stearns, and Fairchild streets, and to construct, maintain and operate suitable curved tracks to connect its present Euclid avenue and Cedar avenue lines with said proposed extension, said line of railway to be thence

constructed and operated through Cedar Glen road to and through the property of the Euclid Heights Company and the property of the Euclid Heights Realty Company, in a northeasterly direction to a point on Coventry road to be located between Berkshire road and Columbia boulevard.

SECTION 2. The right to cross said Deering, Stearns and Fairchild streets being hereby granted on the express condition that said railway is to be constructed and operated on the above route, and that the same is not to be extended south thereof.

SECTION 3. Said railway company shall pave a space sixteen feet in width across said streets on the line of this extension with the same material as the balance of the street is paved, and maintain the same to the satisfaction of the Board of Control.

SECTION 4. Said extension shall be operated as a part of the Euclid avenue main line of said company; and said company shall operate on said extension through cars to and from the Public Square, under a ten-minute schedule or headway between the hours of 6 a. m. and 8 p. m. and under a fifteen minute schedule or headway between the hours of 8 p. m. and 11 p. m.

SECTION 5. No additional fare shall be charged by said company by reason of this extension.

SECTION 6. Said extension shall be completed by June 17, 1897, after the passage of this ordinance, to some point on the property of the Euclid Heights Realty Company north of Derbyshire road.

SECTION 7. All tracks laid by said company under this ordinance shall be of standard gauge ninety pound rails, or such improved rails as may hereafter be consented to by the Board of Control, with suitable gutters at all necessary points, so as to permit the free flow of water under the same, and on such grades as are now or hereafter may be established by the City Council, and subject at all times to

be taken up and relaid whenever deemed necessary by the City Council to grade said street, construct sewers or lay water or gas pipes or wires therein, at the expense of said company.

SECTION 8. The laying of said tracks and the erection of said poles and the placing thereon of the necessary wires and appliances shall be under the supervision and control of the Director of Public Works, and said poles shall be of such size and shall be set at such places as shall be required by said Director. Should it become necessary in the prosecution of any work by the city that such poles be temporarily moved, such removal shall be made and such poles be reset by said company, at its own cost. The running of cars on any part of the lines of street railroad herein described of said company may be suspended by the Board of Control for such period as may at any time be necessary on account of repairs of streets or sewers or the making of any public improvements, and whenever it may be necessary to have any track taken up for any of the purposes aforesaid, the same shall be taken up and relaid at the expense of said company.

SECTION 9. Said The Cleveland Electric Railway Company shall be limited in the use of the tracks herein granted to the rights herein expressly granted.

SECTION 10. And be it further ordained, that the following specifications shall be required by the Council in the running of said company's cars thereon:

1st. Cars driven in the same direction shall not approach each other within a distance of thirty feet; and the rate of speed of all cars shall be under the direction of the City Council at all times.

2nd. The conductors and motormen of each car shall keep a vigilant watch of all teams, carriages, persons on foot, and especially children, on the track or moving toward it; and upon the first appearance of danger to such team or

person, or other obstruction, the car shall be stopped in the shortest time and space possible.

3rd. Cars after sunset shall be provided with signal lights.

SECTION 11. The rights and privileges herein granted shall be subject to the provisions of the general street railway ordinances, or so much of the same as may be applicable and not inconsistent herewith, and such further and future ordinances as the Council and Board of Control may prescribe.

SECTION 12. The failure or refusal of said company to comply with and perform all and singular the terms and conditions of this ordinance or the general ordinances of the city relating to street railroads now or hereafter in force, shall unless otherwise provided, work a forfeiture of this grant, and the rights and privileges hereby granted shall become null and void upon the passage of an ordinance by the Council to that effect, or in case said company shall fail to operate cars upon said extension for a period of twenty days after having begun operations, this grant, together with all rights hereunder, shall cease and determine.

SECTION 13. *This grant shall expire July* 1, 1914.

SECTION 14. Said railway company shall file with the City Clerk within ten days after the passage of this ordinance a written acceptance of the same, and such acceptance shall be deemed an agreement to perform all and singular the conditions and requirements of this ordinance, otherwise this ordinance shall be null and void.

SECTION 15. Said railroad company, its successors, or assigns, shall at all times hereafter save harmless and indemnify the city of Cleveland from any and all lawful claims and damages for injury to person or property and all cost and expenses to which said city may be subjected or made liable by any proceedings at law or in equity, or otherwise growing out of the construction, use, operation, or mainte-

nance of said railroad or out of the granting of the privileges in this ordinance granted or by reason of the giving or granting of the authority or privileges hereby granted.

And it is understood and agreed that the city of Cleveland shall not be held liable to said company, its successors, or assigns, for any damages resulting from the breakage of any sewer or water pipe or for any delay that may be caused by the construction of any sewer or laying of any water or gas pipe, or electrical conduit or wires and the necessary repairing of the same, or for any delay or damages that may be caused by fire or otherwise.

All rights vested in the City Council or Board of Control in respect to the grading or improvement of streets, construction of sewers, culverts, gutters, and the laying of electrical conduits, water and gas pipes therein, are in no way to be impaired or effected by any of the privileges granted to this company, its successors or assigns, by virtue of this ordinance.

SECTION 16. This ordinance shall be in force from and after its passage and legal publication and the payment to the City Treasurer of the cost of such publication.

Passed Sept. 21, 1896.

H. H. Burgess, City Clerk.

C. A. Witzel, V. Pres. of the Council.

Reconsidered Sept. 28,—yeas 17, nays 4,—and referred to the committee on streets and railways.

Finally passed October 5, 1896, and approved by the Mayor October 8, 1896.